IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1187 of 1996

in

SPECIAL CIVIL APPLICATIONNo 2214 of 1996

For Approval and Signature:

HON'BLE MR.JUSTICE D.K.TRIVEDI
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

TALUKA DEVELOPMENT OFFICER

Versus

SAVJIBHAI PARBATBHAI

Appearance:

1. LETTERS PATENT APPEAL No. 1187 of 1996

MR PJ KANABAR for Appellant No.

MR DC SEJPAL for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.K.TRIVEDI
and

HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 03/12/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.K.TRIVEDI)

Unfortunately, this letters patent appeal had remained pending though as per order passed by the Division bench on 20.2.1997 while deciding the review application filed by the appellant for seeking review of the earlier order had directed the office to place the letters patent appeal for final hearing in the first week of April, 1997. Inspite of such direction, though the matter was listed before the court, the appeal is not disposed of for reasons best known to us. Accordingly when the matter was heard before us, earlier we have heard Mr.Kanabar who appeared for the appellant Taluka Panchayat and Mr.Sejpal who appeared for the respondent-workman. During hearing, Mr.Kanabar has taken us through the order under challenge passed by the learned single Judge while disposing of Special civil application no. 2214/96 filed by the appellant as well as the main petition in which the appellant has challenged the award of the Labour Court, Bhavnagar dated 22.11.95 while disposing of the Reference no. New LCB 169/93 (Old no. LCDR 1470/89) filed by the respondent-workman. It is the contention of Mr.Kanabar that the learned single Judge has not properly considered the contentions raised in the main petition in which the appellant has challenged the order passed by the Labour court. In light of the evidence led before the Labour court between the parties, it is the contention of Mr.Kanabar that even as admitted by the respondent-workman before the labour court in his evidence on the basis of the statement of claim filed by him, he has in turn deposed that he was employed under NRIP scheme as a daily wager and for running the said scheme, the Central Government was providing grant for running such scheme. The grant was only for running the said scheme and as the said scheme was closed due to closure of the grant of the Central Government, services of the respondent-workman was terminated with effect from 17.03.1989. In light of the evidence led, it is the contention of Mr.Kanabar that labour court was not right in granting reinstatement of the respondent-workman as well as by awarding back wages to the extent of 75%. Mr.Kanabar to demonstrate his contention took us through the award under challenge passed by the labour court on 22.11.95. As found from the award, it is the case of the respondent-workman that reference was moved for

adjudication before the labour court as provided under sec. 10(1) of the Industrial Disputes Act 1947 and the labour court was to adjudicate the reference that whether the workman was required to be reinstated on his original post and was entitled for back wages. A statement of claim was filed by the respondent-workman before the labour court. The said statement is at exh. 3. In the statement of claim it is the say of the respondent-workman that the appellant i.e. DPAP Taluka panchayat, Liliya mota, District Amreli has appointed him as a clerk with effect from 24.09.1986 at the rate of Rs.21.45ps. per day and without following any procedure, services were terminated by not even giving notice or any compensation and accordingly the respondent be reinstated in service and also pay back wages as legal notice was also not given to the respondent-opponent and inspite of that they have not implemented and acted upon the legal notice. It is the say of the workman that the opponent-authority had also continued to give work to the junior and in place of the workman, the opponent-authority had appointed other persons. They have also not maintained by discharging the persons according to the seniority list nor they have prepared any seniority list. In short it is the claim of the workman that the action of the respondent by terminating his services with effect from 17,03.1989 is illegal and the workman be reinstated in service by granting back wages. In response to the notice issued to the present appellant-original opponent, a written statement was filed and it is the case of the opponent by denying the contentions raised by the workman. They have also denied the fact that the workman was appointed as a clerk from 24.09.1986 to 17.03.1989 and he was illegally terminated. It is the case of the opponent that the workman was appointed purely on daily wages and no regular appointment was given and the workman was only provided work whenever any work was required as a daily wager and as and when there was no work the workman has not to attend the work as a daily wager. In short, it is the case of the opponent that as and when the workman was called for daily wager, he has to work as a daily wager. He was paid salary as per the daily wages. No appointment order was given to show that the workman was appointed as a clerk. As the workman was not appointed regularly in the establishment of the opponent, there was no necessity to pay even the notice pay nor any compensation and they prayed for the dismissal of the reference. Before the labour court, the workman Savjibhai's evidence is recorded at exh. 14 and on behalf of the opponent one witness Shri Himatlal Govind Shanker TDO was examined at exh. 22. The labour court

has considered the evidence led before it and documents produced and as per the statement of claim filed by the workman, the labour court observed that as found from the evidence of the workman and as per the statement of claim, he was working as clerk with the opponent from 24.09.1986 to 17.03.1989 as daily wager and he was getting Rs.21.45ps. The labour court has also considered this fact in light of the evidence led by the opponent namely from the evidence of Shri Himatlal wherein he has also admitted in cross-examination that the workman was in service from 24.09.1986 to 17.03.1989 as a daily wager. The labour court accordingly considered that as found from the evidence of the workman he was working with the opponent as a clerk which fact was denied by the opponent and it is the case of the opponent that the workman was working as a daily wager purely on temporary basis and no regular appointment was given as there was no vacancy in the establishment and the workman was called as and when the existence of work was there. The labour court further considered that as found from the evidence of Shri Himatlal, the witness on behalf of the opponent that the workman was working as a daily wager under the scheme known as NRIP scheme and the Central Government was giving grant for running such scheme and the said grant was only restricted for the said scheme and as the said scheme was closed, the workman was relieved and discharged from 17.03.1989. The labour court considered this evidence that no such order was produced and brought on the record that the workman was employed only for a particular scheme and according to the labour court there is nothing on record to suggest that the workman was employed under NRIP scheme and no evidence is led by the opponent and according to the labour court there is inconsistent evidence brought. The labour court accordingly also considered the documents on the record i.e. exh. 18, 19 & 20. These are the orders passed. As found from exh. 20, TDO has entrusted the work to the workman and considering the document exh. 18,19 & 20, the labour court has considered that the workman was working with the opponent as a clerk. In light of this evidence, the labour court has further observed that it is established that the workman has worked with the opponent from 24.09.1986 to 17.03.1989. The labour court has further observed that no evidence is led by the opponent by producing any document that the workman had not worked during this period in a year for 240 days and the labour court has on this evidence observed that the workman has worked with the opponent-authority continuously for 240 days in a year. The labour court has further observed while considering the evidence of the opponent that as no evidence is

brought by the opponent that it is only due to closure of the scheme, the workman was terminated and in light of the finding recorded earlier that the workman has worked for 240 days in a year as the opponent has not paid any compensation. The opponent has violated Sec.25(F) of the Industrial Disputes Act and according to the labour court the workman was required to be reinstated. Though the evidence was led by the opponent that no seniority list was maintained and as the workman was a daily wager and the closure of the scheme, the workman was discharged, there is no question of making payment or compensation to the workman. The labour court considered that under Rule 77 under the Industrial Disputes Act, it is mandatory on the part of the opponent to prepare seniority list and by not preparing such list according to the labour court, there is a breach of sec.25(G) read with Rule 77 and accordingly the workman is required to be reinstated in service. While recording such finding for granting relief of reinstatement of the workman and on examining the claim of the workman for the backwages, the learned Judge has stated in his award at para 12. In the evidence of Himatlal examined on behalf of the opponent-appellant TDO it is his case that the workman had agricultural land in the village and in addition the workman was having a panbidi shop and an electric store. The workman had also studied upto B.Com L.L.B. Exh. 23 is the public advertisement produced which was in the name of Shri S.B.Bhatkodia the respondent-workman. In the cross-examination, there is nothing about the qualification held by the workman. It is further found from the cross-examination of Shri Himatlal that even as a daily wager, the workman was not getting salary for public holidays and Sundays and the payment made to the workman was as per the statement of salary prepared by Taluka Panchayat. Even in cross-examination Shri Himatlal has in turn deposed that the workman was provided the work only under the scheme. It is further found from the cross-examination that during the period from 1986 to 89 in the establishment of the Taluka Panchayat, there is no other daily wager except the present workman. The TDO has also in cross-examination admitted that NRIP is one of the programme of the DPAP (Drought Prone Area programme) and he has admitted that after the said scheme was closed, another scheme started as Jawahar Vikas Yogna in which 80% granted was provided by the Central Government and rest 20% was provided by the State Government and the said scheme is still in force. The labour court has accordingly on this evidence considered that the workman is entitled 75% backwages by observing that there is nothing on record to show that the workman was gainfully employed and getting regular

salary during this period and the labour court has accordingly allowed the reference partly in favour of the workman and the opponent was directed to DPAP Taluka Baliya reinstating the workman to the original post on publication of the award within 30 days and to pay 75% backwages by awarding Rs.500/- to be paid by the opponent to the workman with continuity of service. As found from the award of the labour court, the direction was given to one of the scheme of Taluka panchayat i.e.DPAP scheme for running such scheme through TDO 100% grant was provided by the Central Government. It is an admitted position even by the workman that because of the closure of the said scheme with effect from 17.03.1989 and as the Central Government grant was not available and the workman was appointed as a daily wager only under this scheme, he was discharged as a daily wager with effect from 17.03.1989. As observed earlier in the evidence of Himatlal TDO, the workman is a double graduate having B.Com L.L.B. The learned Single Judge has while considering the award passed by the labour court, by speaking order dismissed the petition filed by the appellant-Taluka Panchayat wherein the learned single Judge has observed that the order under challenge was in respect of the reinstatement of the workman as a daily wager to his original post with the backwages awarded at 75% and that the appointment of the workman was for a particular scheme for which the workman was not entitled to claim to continue as a daily wager and in view of the finding recorded by the labour court, the learned single Judge has not interfered with the order under challenge by observing that there is no error in exercise of jurisdiction by the Tribunal in respect of the finding recorded. Against the order of the learned single Judge the appellant has preferred the letters patent appeal which we have already observed that while admitting the appeal and on considering the application for stay, the court had granted stay in respect of award passed by the labour court in respect of backwages, however, the order regarding reinstatement was not stayed. During hearing, Mr.Sejpal appearing for the respondent has also submitted before us that though the stay regarding reinstatement was not granted in support of the review application filed by the appellant, the appellant has not reinstated the workman on his original post. The opponent-workman has also by addressing letter to the appellant-authority has requested to reinstate as per the award and as per the direction given by the High court. Though repeated request is made, the appellant-authority has not acted upon by reinstating his client as a daily wager. We have also as per our order dated 20.11.2003 has adjourned the matter in light of the submissions made before us on the

ground that even the respondent-workman due to inaction on the part of the appellant by not reinstating him on the original post as a daily wager and as the opponent was qualified, he himself has obtained sanad and enrolled as advocate since 2002 and he is practising lawyer at Liliyakot. It is an admitted fact that the appointment of the opponent by the appellant was under the scheme for a particular scheme and for the said scheme the Central Government was providing 100% grant. It is also an admitted position that it is only because of the closure of the said scheme, the appellant has discontinued the opponent-workman to work as a daily wager. That there is another scheme of the Central Government known as Jawar Vikas Yojna which is admitted by the appellant-witness that at the relevant time that scheme was in force and the request for the appellant for stay of the order of the award regarding reinstatement was refused. It was incumbent upon the appellant-authority to appoint the workman as a daily wager. As found from our earlier order dated 20.11.2003 in M.C.A.no.152/97 was filed by the appellant for seeking modification of the order wherein the appellant has prayed for stay of the order regarding reinstatement of the workman and the Division Bench has in turn rejected the application and while disposing of that application, the office was directed to place this appeal for final hearing in the first week of April 1997. As observed earlier though the L.P.A. was ordered to be notified in the first week of April 1997, for the reasons best known to us the matter is not disposed of till date. It is also admitted fact that the opponent-workman though has requested the appellant-authority for seeking reinstatement as a daily wager, even by issuing letters and inspite of that no steps were taken by the appellant-opponent workman has also not moved this court even after the end of April 1997 by informing the court that inspite of rejection of the review application, the appellant-authority is not reinstating him as a daily wager and even the hearing of the L.P.A. The respondent is being represented by a lawyer and the respondent himself is now enrolled as an advocate. The respondent Savjibhai is also present during hearing. We have also ascertained from him that whether he is interested in getting the work as a daily wager with the appellant in view of the fact that he has enrolled himself as an advocate and at present he is practising advocate. The respondent Savjibhai has in turn stated before us that as he is now practising lawyer he is not pressing for award regarding reinstating him as a daily wager. However, it is his contention that he has a case for seeking compensation in view of the award passed by the labour court at the rate of 75% and that

some compensation be paid to him in light of the award passed by the labour court. Mr.Sejpal the learned advocate on behalf of the respondent has also submitted that his client is not interested in getting the order of reinstatement. According to him in the interest of justice in view of the award passed by the labour court granting reinstatement with 75% back wages, the appellant-authority be directed to pay some compensation and according to him that it is only his client enrolled as an advocate in the year 2002 and therefore according to Mr.Sejpal that if by way of compensation and keeping in view the award under challenge if the backwages awarded by the labour court be limited upto December, 2001 his client will satisfy and accept such award. In light of the contentions raised before us, it transpires that the appointment of the opponent was for a particular scheme and he was working as a daily wager. It is only because of the expiry of the scheme and stoppage of grant from the Central Government, the respondent-workman was relieved from the service as a daily wager with effect from 17.03.1989. So far as backwages part is concerned, the labour court has in turn on appreciating the evidence has recorded finding in para 12 that there is nothing on record that the workman was gainfully employed during this period. However, it is an admitted fact that the respondent-workman had an agricultural land in the village. We may also observe that the manner in which the evidence is required to be brought by the appellant-authority is not brought and that has resulted into order of granting reinstatement with the backwages at the rate of 75%. In absence of such evidence, though was available, was not brought by the authority and the finding recorded as observed earlier in para 12 that the respondent was not gainfully employed which has resulted into 75% of backwages. During hearing, it is also transpired that the respondent-workman had 25 vighas of agricultural land in the village. He is the only son of his father and he lost his father. In the interest of justice and in view of the stand taken by the opponent who is now settled and working as an advocate and he is not interested in getting reinstatement, however, fact remains that he is also entitled for some compensation. Keeping this in view that even while admitting the appeal stay was limited only to backwages. In our view, this is a fit case in which while setting aside the award under challenge, it will serve the interest of justice if we direct the appellant to pay the award compensation to the appellant keeping in mind that this appeal is pending during the pendency of this appeal in view of the award passed by the labour court as back as in November, 1995, the amount compensation is quantified at Rs.85,000/-.

Accordingly this appeal is disposed of in the above term. The order under challenge as well as the award passed by the labour court is modified to the extent that the order regarding reinstatement of the workman is set aside and the order regarding backwages quantified at 75% is modified and the respondent-workman is entitled for compensation at Rs.85,000/-. The appellant is directed to pay such compensation within eight weeks from today. If in any case, the amount is not paid to the workman within time granted by this court, the appellant is required to pay interest at the rate of 6% for the delayed payment. The appeal is accordingly disposed of in the above terms with no orders as to costs.

(D.K.TRIVEDI, J)

(SHARAD D DAVE, J)

srilatha